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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,112	01/13/2004	Kami Gillmour-Bryant	50652/RAG/M917	2929
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CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3714	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,112	Applicant(s) GILLMOUR-BRYANT ET AL.	
	Examiner Urszula M. Cegielnik	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) ☐ Claim(s) ____ is/are allowed.

6) ☒ Claim(s) 1-12 is/are rejected.

7) ☐ Claim(s) ____ is/are objected to.

8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. ____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 03/29/2004.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ring of insulating material must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

description: 41. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character " 38' " has been used to designate both central spring arm and finger. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The above are intended as examples only. Applicant is requested to thoroughly review the Drawings and Specification and make any necessary corrections thereto wherever appropriate but not specifically pointed out.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 contains the trademark/trade name MYLAR. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe polyethylene terephthalate and, accordingly, the identification/description is indefinite.

Claim 11 recites the limitation "the circuit board" in line 1-2. There is improper antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Glynn et al. (US Patent No. 5,545,069).

Glynn et al. disclose illuminable edibles illuminated by a battery powered light source (col. 2, lines 7-10). A replaceable, illuminable edible is attached to a holder (col. 2, lines 7-10). The reference teaches candy attached to a holder in the form of a ring (col. 1, lines 21-24); housing (5) containing a power source (13) and an electrical circuit (col. 4, lines 16-20), the housing (5) having an upwardly extending portion (7) for supporting a consumable portion (9); a finger-grasping portion extending from the housing (see US Design Patent No. 242,646, [Figure 4, the housing being the circular portion and the finger grasping portion extending downward therefrom], as cited by Glynn at col. 4, lines 16-20) for engagement with the finger of a user (col. 1, line 16 and 21-24); and an illuminating element (11) connectable to the electrical circuit (col. 4, lines 16-20) and the power source (13) to illuminate the consumable portion (col. 4, lines 1-3); the illuminating element is disposed within the upwardly extending portion of the housing is capable of transmitting at least a portion of the light from the illuminating element (transmission of light is possible by light permeating portion 8 which is a continuous opening from the light source 11 end in the base 5 to the protrusion end of the

Art Unit: 3714

illuminable edible 9, col. 4, lines 3-8); the electrical circuit has at least one electrical contact for completing the electrical circuit in a containing portion thereof; col. 4, lines 16-21); the at least one electrical contact comprises a resilient electrical conductor mechanically biased relative to the power source (13) to complete the electrical circuit to the contacting position thereof (col. 3, lines 65-67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coleman et al. (US Patent Publication No. 2002/0126507) in view of Liaw (US Patent No. 5,536,054).

Gordon discloses a housing (20) containing a power source (30) and an electrical circuit (32), the housing (20) having an upwardly extending portion (40) for supporting a consumable portion (12); a finger-grasping portion extending from the housing for engagement with the finger of a user; and an illuminating element (28 - light emitting diode) connectable to the electrical circuit (32) and the power source (30) to illuminate the consumable portion (12); the illuminating element disposed within the upwardly extending portion (40) of the housing (20), and the upwardly extending portion of the housing is capable of transmitting at least a portion of the light from the illuminating element; the electrical circuit has at least one electrical contact for completing the

Art Unit: 3714

electrical circuit in a contacting position thereof; and the ring toy comprises a removable insulator disposed adjacent the electrical contact in a non-contacting position to interrupt the electrical circuit; at least one electrical contact comprises a resilient electrical conductor () mechanically biased relative to the power source to complete the electrical circuit in the contacting position thereof; the power source includes at least one button battery (*silver oxide button cell battery*).

Gordon does not disclose a finger-grasping portion extending from the housing for engagement with the finger of a user.

Liaw discloses a lollipop holder having a housing with corrugations (28) for facilitating gripping of portion by the hand by the user (col. 2, lines 42-43).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a finger-grasping portion extending from the housing as taught by Liaw, since Gordon states at paragraph 0030, line 1, that it would have been obvious to provide the housing in any desired shape.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glynn et al. (US Patent No. 5,545,069) in view of Gorringer et al.

Glynn et al. disclose the claimed invention except for an insulator that is removable and disposed adjacent the electrical contact in a non-contacting position to interrupt the electrical circuit.

Gorringer discloses a shim 108 that can be mechanically inserted between a battery terminal 102 and contact 104, thereby physically breaking the connection between battery 100 and circuitry being powered by the battery (col. 2, lines 14-17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an insulator that is removable and disposed adjacent the electrical contact in a non-contacting position to interrupt the electrical circuit as taught by Gorringer et al, since Glynn et al. teach that different switch arrangements may be used for making or breaking an electrical circuit (col. 3, lines 46-50).

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Gorringer et al.

Gordon, as modified by Liaw, lack a removable insulator disposed adjacent the electrical contact in a non-contacting position to interrupt the electrical circuit.

Gorringer discloses a shim 108 that can be mechanically inserted between a battery terminal 102 and contact 104, thereby physically breaking the connection between battery 100 and circuitry being powered by the battery (col. 2, lines 14-17).

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 3 above, and further in view of Galli.

Coleman et al. (UUS Patent Publication No. 2002/0126507), as modified by Liaw (US Patent No. 5,536,054), lacks the insulator constructed of coated paper (MYLAR).

Galli discloses a switch assembly which includes a insulating portion 12 which may be made of MYLAR (paragraph 0009, lines 13-17).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an insulator made of coated paper (MYLAR) as taught by Galli, since such a modification would an alternate insulating material for switch arrangements.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Fong.

Gordon, as modified by Liaw, lacks a circuit board integrated into the electrical circuit to cause the illuminating element to flash, the circuit board including at least one integrated circuit configured as a flasher, and the LED being a flashing type.

Fong teaches an illuminating toy having an LED assembly which includes a circuit board to cause the LED to flash (paragraph 0019, lines 1-4 and 14-18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a flashing LED with associated circuitry as taught by Fong, since such a modification would make the toy more visually appealing to a child.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 5:45AM - 2:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for both regular and After Final communications.

Urszula M. Cegielnik
Assistant Examiner



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Art Unit: 3714

Art Unit 3714